

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 37 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH-TAX

Versus

KIRANKUMAR J PATEL (HUF)

Appearance:

Mr.Pranav G Desai for MR MANISH R BHATT for Petitioner
Respondent served by RPAD.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 02/02/98

ORAL JUDGEMENT (Per R.K.Abichandani, J)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this court under Section 27(1) of the Wealth Tax Act, 1957.

"Whether the Appellate Tribunal is right in law

and facts in directing the Wealth-tax officer to value the unquoted shares of Navalgram Lubi Electricals P.Ltd. and Anamil Trading and Mfg.P.Ltd. by holding that the advance tax paid under the I.T.Act 1961 and shown on the asset side of the balance sheet of the said companies cannot be deducted from the tax payable in determining whether the provision for taxation is in excess over the tax payable with reference to the book profit in accordance with the law applicable thereto, within the meaning of clause (ii)(a) of Explanation II to Rule 1-D of the Wealth Tax Rules, 1957?"

2. In respect of certain unquoted equity shares of private Ltd. companies, the assessee claimed that they should be valued as per the decision of the Gujarat High Court in Ashok K Parikh v/s. C.W.T reported in 129 ITR, 46. In that case, this court had taken a view, while construing clauses (i)(a)(ii)(e) of explanation II to Rule 1-D, that for the purpose of computation of the market value of the equity shares of a company, the advance tax paid under Section 210 of the Income Tax Act, 1961, and shown on the assets side of the balance sheet of the company, cannot be deducted from the tax payable, in determining whether the provision for taxation is in excess over the taxes payable with reference to the book profits in accordance with the law applicable thereto within the meaning of clause (ii)(e) of explanation II to Rule 1-D of the said rules.

3. The said question came up for consideration before the Supreme Court in Bharat Hari Singhania v/s C.W.T reported in 207 ITR Pg.1 and the Supreme Court while construing the provisions of Rule 1D of the said rules in terms held that Rule 1D is exhaustive on the subject and while valuing the unquoted shares under that rule no deduction on account of provision for taxation was admissible. The Supreme Court while construing the provisions of Rule 1-D read with explanation II (ii)(e) of the said rules held that truly speaking, the advance tax paid is not really an asset, but the proforma of balance-sheet in Schedule VI of the Companies Act which requires it to be shown as such. It was held that what clause (i)(a) of the said Explanation did was to remove the said amount from the list of assets for the purpose of Rule 1D. It is then that clause (ii)(e) which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. The

advance tax had already gone out of the profits and been debited in the account books of the company. It was held that this was the true function of both the sub-clauses. The Supreme Court in the process accepted the view of Andhra Pradesh, Karnataka and Punjab & Haryana High Courts and differed from the view taken by the Gujarat High Court in C.W.T v/s. Ashok K Parikh (Supra).

4. In view of the decision of the Supreme Court in Bharat Hari Singhania case (Supra) We hold that the Tribunal was in error in directing the Wealth Tax Officer to value the unquoted shares of private limited companies by holding that the advance tax paid under the Income Tax Act, 1961 and shown on the asset side of the balance sheet of the said companies cannot be deducted from the tax payable in determining whether the provision for taxation is in excess over the tax payable with reference to the book profit in accordance with the law applicable thereto, within the meaning of clause (ii)(e) of Explanation II to Rule 1-D of the Wealth Tax Rules, 1957. The question referred to us is therefore answered in the negative in favour of the revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

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